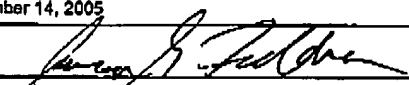
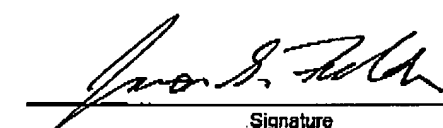


Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 30566.137-US-01	
I hereby certify that this correspondence is being filed via facsimile transmission to the U.S. Patent and Trademark Office under 37 CFR 1.8 on <u>November 14, 2005</u> Signature <u></u> Typed or printed name <u>Jason S. Feldmar</u>		Application Number <b>09/747,455</b>	Filed <b>December 22, 2000</b>
		First Named Inventor <b>Stephane Harnois</b>	
		Art Unit <b>2616</b>	Examiner <b>Jamie J. Vent</b>
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/06)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. <b>39,187</b> Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p> Signature <u>Jason S. Feldmar</u> Typed or printed name <b>(310) 641-8797</b> Telephone number <b>November 14, 2005</b> Date</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-8188 and select option 2.

Due Date: November 11, 2005

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Stephane Hamois	Examiner:	Jamie J. Vent
Serial No.:	09/747,455	Group Art Unit:	2616
Filed:	December 22, 2000	Docket:	G&C 30566.137-US-01
Title:	IMAGE PROCESSING		

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PRE-APPEAL BRIEF REQUEST FOR REVIEW ARGUMENTS

MAIL STOP AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the final Office Action dated August 11, 2005 and the Advisory Action dated November 3, 2005, Appellants hereby submit a Notice of Appeal accompanied by a Pre-Appeal Brief Request for Review. The claims have not been amended.

Appellants request this review based on clear error in the examiner's rejection and the omission of one or more essential elements needed for a prima facie rejection. Specifically, there is clear error in that the disclosure of Bopardikar lacks several essential elements needed to establish a prima facie rejection under 35 U.S.C. §102. In addition, there is clear error in the rejection relating to disregarding the numerous aspects of Bopardikar that teaches away from the present invention. Further, the rejection omits several claim limitations.

Appellants direct the attention of the Panel to pages 7-8 for a summary of the invention and a description of the claim limitations.

Omission of Essential Elements Needed to Establish a Prima Facie Rejection under 35 U.S.C. §102 Based on the Single Cited Reference

Appellants direct the attention of the Panel to pages 8-9 of the Response filed on October 11, 2005. Specifically, Appellants note that none of the prior Office Actions indicate where the cited Bopardikar reference provides that a write operation is conducted in real-time without RAID

calculations and without parity. Instead, the actions merely state that Bopardikar's processors within the system make the RAID calculations not necessary. Again, the claims specifically provide for not writing the parity during the first write operation. Nowhere is there any remote reference to such a teaching in Bopardikar. Accordingly, there is clear error in omitting this claim element. Such an omission results in a failure to establish a prima facie rejection using a novelty standard under 35 U.S.C. §102.

Clear Error in Disregarding the Teaching Away Aspects of Bopardikar

Appellants direct the attention of the panel to pages 9-10 of the Response filed on October 11, 2005. It is noted that numerous locations of Bopardikar teach away from the presently claimed invention and its limitations. Such a teaching away cannot be disregarded in considering the application. Further, such a teaching away further establishes the failure to establish a prima facie rejection under 35 U.S.C. §102 as described above.

Omission of Essential Claimed Elements Needed to Establish a Prima Facie Rejection

Appellants direct the attention of the panel to pages 10-11 of the Response filed on October 11, 2005. Specifically, Appellants note there are at least three primary elements/differences that are omitted not considered in the Actions:

- (1) the write operation is conducted both:
  - (a) without RAID calculations; and
  - (b) without parity;
- (2) the parity is generated during a read operation of the data (that was previously written during the write operation); and
- (3) the generation of the parity creates protected data that is written during a second write operation.

The Actions merely refer to col. 27, lines 40+ to teach the above unique combination of elements. However, nowhere is there any reference to the generation of parity during a read operation. Instead, the cited text merely states that during a write operation, parity data is written to the stripe buffer (see col. 27, lines 54-56). Such a teaching does not even remotely refer to when the parity was generated. However, such a teaching does indicate that it is generated prior to or during

the write operation. Thus, the cited text actually teaches away from the generation of parity during a read operation of the data that is already written.

The Actions also recited col. 13, line 21-col. 14, line 12. A detailed examination of this text also reveals no indication, implicit or explicit to the generation of parity during a read operation. The text in col. 14, indicates the reading of multiple stripes in parallel. However, such text still fails to describe any generation of parity during such a read operation. Further, the concept of writing such parity during a subsequent write step is not even remotely alluded to in Bopardikar.

Again, the combination of claim limitations provides a series of steps that are missing in Bopardikar. Further, the Actions not only fail to address the combination of elements but also fails to address the specific claim elements relating to the generation of parity. Such an omission relates to an essential element that is needed to establish a prima facie rejection.

Based on the above, there is clear error in the examiner's rejections. For example, the Examiner has failed to address and provide the appropriate meaning to all of the claim limitations. Further, the examiner has omitted at least one essential element (i.e., the generation of parity during a read operation) that is needed to establish a prima facie rejection.

In view of the above, it is submitted that this application is now in good order for allowance and such allowance is respectfully solicited. Should the Examiner believe minor matters still remain that can be resolved in a telephone interview, the Examiner is urged to call Appellant's undersigned attorney.

Respectfully submitted,

GATES & COOPER LLP  
Attorneys for Appellant(s)

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Date: November 14, 2005

By:   
Name: Jason S. Feldmar  
Reg. No.: 39,187

JSF/